cepting the duty to review this question of fact, we have examined the evidence in the record and find that it fairly supports the conclusion of the state court that the deceased was accepted by plaintiff in error as a gratuitous passenger.

But, finally, it is argued (*b*) that it was beyond the power of the state court to "read into the Hepburn Act an exception in favor of gratuitous passengers"; thereby (as is said) enlarging the class to whom Congress limited the right of free interstate transportation. This is ingenious, but, as we think, unsound. As applied to the concrete case, it is equivalent to saying that the operation of the Hepburn Act is such as to deprive one who, in good faith and without fraud, and with the consent of the carrier, but in actual though unintentional violation of the prohibition of the act, accepts a free passage in interstate transportation, of the benefit of a rule of local law that renders the carrier in such circumstances responsible for exercising care for the passenger's safety because the carrier has voluntarily undertaken the burden of such care. But the act itself declares what penalty shall be imposed for a violation of its prohibition: "Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass or free transportation, shall be subject to a like penalty." This penalty is not to be enlarged by construction. Neither the letter nor the spirit of the act makes an outlaw of him who violates its prohibition by either giving or accepting gratuitous interstate carriage. The deceased no more forfeited his life, limb or safety, and no more forfeited his right to the protection accorded by the local law to a passenger in his situation, than the carrier

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forfeited its right of property in the mail car upon which the deceased rode. His right to safe carriage was not derived, according to the law of Utah, from the contract made between him and the carrier, and therefore was not deduced from the supposed violation of the Hepburn Act. It arose from the fact that he was a human being, of whose safety the plaintiff in error had undertaken the charge. With its consent he had placed his life in its keeping, and the local law thereupon imposed a duty upon the carrier, irrespective of the contract of carriage. The Hepburn Act does not deprive one who accepts gratuitous carriage, under such circumstances, of the benefit and protection of the law of the State in this regard.

It results that the judgment under review must be affirmed, irrespective of the question whether the Hepburn Act forbids the giving of free interstate transportation to the employés of the Railway Mail Service when not on duty.

Judgment affirmed.